

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES ST. LOUIS,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 06-236-SLR
)	
LT. CHERYL MORRIS, et al,)	JURY TRIAL REQUESTED
)	
Defendants.)	

DEFENDANTS' MOTION TO STAY

Pursuant to the Servicemembers Civil Relief Act, 50 App. U.S.C. § 501 *et seq.*, Defendants hereby move to stay this action as to Defendant Andre Johnson ("Johnson"). In support thereof, Defendants state as follows:

1. In this prisoner civil rights action, Plaintiff James St. Louis ("Plaintiff") claims that he was terminated from his employment in the kitchen at Delaware Correctional Center ("DCC") in retaliation for complaining about the conduct of another inmate kitchen worker. He has named seven Defendants in this action, including a "Sgt. Johnson."¹

2. The Amended Complaint was filed on October 13, 2006. [D.I. 13]. On June 15, 2007, the Court entered a scheduling order, which sets the discovery deadline as August 13, 2007, with dispositive motions due September 13, 2007. [D.I. 37]. There is currently no trial date.

3. Johnson is a member of the Delaware Army National Guard. In May 2007, he

¹Undersigned counsel has been mistakenly identifying "Sgt. Johnson" as *Edwin* Johnson. Service was in fact accepted by *Andre* Johnson. [D.I. 24]. Thus, in all future pleadings, "Sgt. Johnson" will be identified as Andre Johnson.

was ordered to active duty to serve in Iraq.² See Johnson's Mobilization Order attached hereto as Exhibit A. His deployment began on June 15, 2007 and will continue for a period "not to exceed 400 days." Exhibit A.

4. The purposes of the Servicemembers Civil Relief Act ("the Act") are: "(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act . . . to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service." 50 App. U.S.C. § 510. Section 521(d) provides for a stay of legal proceedings where "there may be a defense to the action and a defense cannot be presented without the presence of the defendant." As a member of a reserve component ordered to report for military service, Johnson falls within the scope of the Act. 50 App. U.S.C. § 516(a).

5. The key issue in determining if a stay is warranted is whether the defendant's ability to conduct a defense will be "materially affected" by reason of his military service. *Boone v. Lightner*, 319 U.S. 561, 565 (1943). The Act is "always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation. The discretion that is vested in trial courts to that end is not to be withheld on nice calculations as to whether prejudice may result from absence . . . Absence when one's rights or liabilities are being adjudged is usually prima facie prejudicial." *Id.* at 575.

6. In the case of Johnson, because he is in active service in Iraq, he is unable to

² Due to the error as to Johnson's first name, undersigned counsel did not learn that Andre Johnson had been deployed to Iraq until this week.

participate in the defense of this matter in any capacity. He will be unavailable to consult with undersigned counsel. He will be unable to attend trial, if the trial is scheduled prior to his return from Iraq. He cannot assist in responding to outstanding Interrogatories propounded by Plaintiff. Thus, Johnson's ability to conduct a defense will be "materially affected" due to his military service.

7. Defendants therefore request that Johnson's participation in this matter be stayed, and that the trial be scheduled only after conclusion of his active military service.

WHEREFORE, for the reasons set forth herein, Defendants respectfully request that this Court grant their Motion to Stay.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Eileen Kelly
Eileen Kelly, I.D. #2884
Deputy Attorney General
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
eileen.kelly@state.de.us
Attorney for Defendants

Date: August 1, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES ST. LOUIS,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 06-236-SLR
)	
LT. CHERYL MORRIS, et al,)	JURY TRIAL REQUESTED
)	
Defendants.)	

7.1.1 CERTIFICATE OF COUNSEL

Undersigned counsel hereby certifies, pursuant to Local Rule 7.1.1, that:

1. Plaintiff James St. Louis is currently incarcerated and it is not practical for undersigned counsel to communicate with him concerning Defendants' Motion to Stay.
2. Therefore, undersigned counsel assumes that the Motion is opposed.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Eileen Kelly
Eileen Kelly, I.D. #2884
Deputy Attorney General
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
eileen.kelly@state.de.us
Attorney for Defendants

Date: August 1, 2007

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JAMES ST. LOUIS,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 06-236-SLR
)	
LT. CHERYL MORRIS, et al,)	JURY TRIAL REQUESTED
)	
Defendants.)	

ORDER

IT IS SO ORDERED, this _____ day of _____, 2007, that:

1. Defendants' Motion to Stay is hereby **GRANTED**; and
2. This matter is stayed as to Defendant Andre Johnson during the duration of his active military service; and
3. Trial of all Defendants shall not be scheduled until Defendant Andre Johnson returns to the United States.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2007, I electronically filed *Defendants' Motion to Stay* with the Clerk of Court using CM/ECF. I hereby certify that on August 1, 2007, I have mailed by United States Postal Service, the document to the following non-registered party: James St. Louis.

/s/ Eileen Kelly
Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
eileen.kelly@state.de.us
Attorney for Defendants

EXHIBIT A

STATE OF DELAWARE
DELAWARE ARMY NATIONAL GUARD
FIRST REGIMENT ROAD
WILMINGTON, DELAWARE 19808-2191

ORDERS 134-071

14 May 2007

JOHNSON ANDRE D
(ZGWAA-401) STATE ARMOR

153 MILITARY POLICE CO
DELAWARE CITY DE

19706

You are ordered to active duty as a member of your Reserve Component Unit for the period indicated unless sooner released or unless extended. Proceed from your current location in sufficient time to report by the date specified. You enter active duty upon reporting to unit home station.

REPORT TO HOME STATION: 15 June 2007 , DELAWARE CITY

REPORT TO MOB STATION: 18 June 2007 , Ft Dix

Period of active duty: Not to exceed 400 days

Purpose: IN SUPPORT OF OPERATION IRAQI FREEDOM

Mobilization Category Code: G

Additional instructions:

- (a) Pursuant to Presidential Executive Order 13223, DTD 14 September 2001, you are relieved from your present reserve component status and are ordered to report for a period of active duty not to exceed 25 days for mobilization processing. Proceed from your present location in sufficient time to report by, (See Standard Name Line of Unit Home/Mobilization Station Arrival Dates). If upon reporting for active duty, you fail to meet
- (b) deployment medical standards (whether because of a temporary or permanent medical condition), then you may be released from active duty, returned to your prior reserve status, and returned to your home address. You will be subject to a subsequent order to active duty upon resolution of the disqualifying medical condition. If upon reporting for active duty, you are found to satisfy medical deployment standards, then you are further ordered
- (c) to active duty for a period not to exceed 400 days, such period to include the period (not to exceed 025 days) required for mobilization processing. Additional instructions continued:
 - (1) You are ordered to active duty with the consent of the Governor of Delaware.
 - (2) Commander, First U.S. Army will exercise general court-martial
- (d) jurisdiction from the time the unit is mobilized until it is released from active duty. Mobilization Station (MS) commanders will exercise UCMJ jurisdiction from the time forces depart their home station until they depart from their air or seaport of embarkation. The MS commander's general court-martial jurisdiction will be exercised subject to the superior competent GCMCA of the Commander, First U.S. Army. The Commander, First
- (e) U.S. Army may withhold the authority of the MS commander to dispose of charges in individual cases, types of cases, or generally. In cases where authority has not been withheld, the MS commander should exercise GCMCA. In addition, the Commander, First U.S. Army will serve as the next superior commander to the MS commander for the general administration of military justice to include relief-for-cause, non-judicial punishment, and other

ORDERS 134-071 HQ DE NG, OTAG, 14 May 2007

Additional instructions (cont):

- (f) administrative actions.
 - (3) Unit(s) is/are ordered to active duty on effective date as indicated below. Unit strengths will not exceed the authorized level below. Unit(s) is/are mobilized in support of Operation Iraqi Freedom (OIF).
 - (4) All unit personnel and individual(s) is/are ordered to active duty in their current grade and in their current position for an initial period of up to 18 months; absent authorized extensions or reorders to active duty, under the provisions of DoD Directive 1235.10 or supplemental guidance.
 - (5) This order constitutes authority for movement. Support installations are directed to process requests from subject RC units pending receipt of hard copy orders to active duty when request can be validated by this order.
- (h)
 - (6) Government quarters and mess will be utilized when available.
 - (7) Excess baggage should not exceed three (3) pieces.
 - (8) Unit members will mobilize with the following equipment: Organizational Clothing Issue and Equipment
 - (9) Per Chapter 5, AR 600-8-1, PER'S and INDIV Rec (MPRJ, Health & Dental Records) will not be transported in the same conveyance.
- (i)
 - (10) Personnel requiring eye correction will bring two (2) pair of eye-glasses and eye inserts for protective mask.
 - (11) Individual is required to bring military and civilian passport.
 - (12) Dependents (Family Members) of Reserve Component (Army Reserve and National Guard) Soldiers ordered to active duty for more than 30-days are eligible for the same benefits (e.g., medical care, TRICARE, commissary, exchange benefits, legal assistance, use of morale, welfare and recreation facilities, etc;) which requires orders to active duty for over 180-days). It is the Soldier's responsibility to ensure dependents are issued DD Form 1172, Active Duty Dependent ID Cards. To locate the nearest ID Card facility near your home visit web site www.dmdc.osd/rsl (Rapids site locator by state, city, sip code). Dependents are also eligible to use Army One Source, which is a 24-hour resource service (from the US: 1-800-464-8107; En espanol, llame al 1-888-375-5971 and collect calls (1-484-530-5889) available at no cost."
 - (13) Unit personnel must have copies of marriage license, birth certificate of children, rental or mortgage agreements and other documents necessary for pay entitlements to be processed by the mobilization station.
- (l) The Installation travel office should make travel arrangements to accommodate excess baggage. If commercial mode of travel is used, individual soldier's orders should reflect authorization for excess baggage PER FORSCOM Reg 500-3-1 para 8.1 (2) states: "Soldiers called to Active Duty are not authorized dependent travel AND the shipment of personal property is limited to baggage."
- (m) POC at First United States Army to address equipment issues is Mr. George Crawford, (G-4), DSN: 797-7775 or 404-469-7775. For unresolved pay issues, contact the ARNG Pay Ombudsman at toll-free 1-877-ARNGPAY or by email at ARNG-MILPAY@ARNG-FSC.NGB.ARMY.MIL.
- (n) (14) Travel will be paid for one time travel from home duty station to mob station and back and includes travel and per diem from home station/mobilization station or duty location and return to home station as well as non-temp storage.

ORDERS 134-071 HQ DE NG, OTAG, 14 May 2007

Additional instructions (cont):

- (o) Family members may be eligible for TRICARE (military health care) benefits. For details call 1-888-DoD-CARE (1-888-363-2273) or go to web address www.tricare.osd.mil/reserve/ or email TRICARE_help@amedd.army.mil.
- (p) "Call 1-800-336-4590 (National Committee for Employer Support of the Guard and Reserve) or check on line at www.ESGR.ORG if you have question regarding your employment and reemployment rights."
- (q) Meals and lodging will be provided at no cost to the Soldier. Claims for reimbursement require a statement of non-availability control number.
- (r) For unresolved pay issues, contact the ARNG Pay Ombudsman at toll-free 1-877-ARNGPAY or by email at ARNG-MILPAY@ARNG-FSC.NGB.ARMY.MIL

FOR ARMY USE

Auth: Active duty orders pursuant to title 10 USC 12302

Acct clas:

Enl pay/alw: 2172010.0000 01-1100 P2X2A00 11**/12** VIRQ F9203 5570 S12120
Enl tvl/pd: 2172020.0000 01-1100 P135198 21**/22**/25** VIRQ F9203 5570 S12120(OIF)
Enl pay/alw: 2182010.0000 01-1100 P2X2A00 11**/12** VIRQ F9203 5570 S12120
Enl tvl/pd: 2182020.0000 01-1100 P135198 21**/22**/25** VIRQ F9203 5570 S12120(OT

Sex: M

MDC: PM

PMOS/AOS/ASI/LIC: 92G1, YY , YY

HOR: 117 THAMES DR , DOVER

DE19904

DOR: 11-DEC-06

PEBD: 24-JUL-98

Security Clearance: N

Comp: ARNGUS

Format: 165

FOR THE ADJUTANT GENERAL:

////////////////////////////////////
// HQ, DEARNG //
// OFFICIAL //
////////////////////////////////////

DISTRIBUTION:

D

ROBERT L. LEGG
COL, OD, DEARNG
Deputy Chief of Staff, Personnel